

2-10-01

FILED
HARRISBURG, PA

MAR 3 1 2003

MARY E. D'ANDREA, CLERK
Per _____
Deputy Clerk

THE UNITED STATES DISTRICT COURT
Middle District of Pennsylvania
Harrisburg, PA

Yan SHAO) No. 1:00 CV 1901
(JUDGE Rambo)
plaintiff,)
v.)
Edward Cuccia)
Charles Day)
John / Jane Doe) CIVIL ACTION - LAW
Law Offices of Ferro & Cuccia)
Defendants.)

mag J. Long, Jr.

BRIEF IN SUPPORT OF MOTION TO COMPEL ASSET DISCOVERY
RESPONSES FROM CHARLES DAY

INTRODUCTION

On Jan 06 2003, counsel for the plaintiff submitted to the defendant and judgement debtor a Second Request for Documents (appended) as well as a Second Request for Admissions (appended). No response has been received.

PROCEDURAL HISTORY OF THE CASE

(SOME ITEMS HAVE BEEN OMITTED AS NOT DIRECTLY RELEVANT TO THE PRESENT MOTION)

1. On November 7, 2001, this Court found Mr. Day had committed legal malpractice and ordered him to pay \$78,016.00 to Ms. Yan Shao, the plaintiff.
2. On December 4, 2001, Mr. Day filed a timely notice of appeal. No other submissions were made in furtherance of the appeal.

3. On August 14, 2002, the Court of Appeals for the Third Circuit Ordered the appeal dismissed. The Court of Appeals sanctioned Mr. Day for having unreasonably multiplied these proceedings.
4. On Jan 6 2003, the plaintiff submitted asset discovery documents now in question to Mr. Day.
5. On March 15 2003, the Court Ordered sanctions imposed upon Mr. Day, pursuant to Rule 11 of the Federal Rules of Civil Procedure, and also ordered a Magistrate Judge (1) to supervise asset information collection (2) convene a settlement conference and (3) set a deadline by which all judgements and sanctions shall be paid.
6. On March 25 2003, Magistrate Judge Smyser ordered the parties to state to the court by April 8 2003 the status of asset information collection efforts and to attend an April 22 2003 settlement conference; Judge Smyser also ordered that all judgements and sanctions shall be satisfied by June 2 2003.

STATEMENT OF FACTS

1. Mr. Day has not paid the amount judged by this Court to be due the plaintiff as a consequence of Mr. Day's malpractice.
2. Mr. Day has not paid the amount assessed against him by the Court of Appeals.
3. Mr. Day has not responded to the discovery (appended) sent to him on January 6, 2003.

STATEMENT OF QUESTION INVOLVED

Whether Mr. Day should be compelled to provide the requested responses.

ARGUMENT

Rule 69 of the Federal Rules of Civil Procedure instructs that a party "may obtain discovery from any person" when such discovery is "in aid of the judgement or execution." The purpose of discover is "to secure the just, speedy, and inexpensive determination of every action." See Fed. R.Civ.P. 1; Barwick v. Celotex, 735 F.2d 946, 955 (4th Cir. 1984); 8 Wright and Miller, Federal Practice and Procedure Sec. 2203 (1970).

CONCLUSION

The present discovery is related to attempts to execute the judgement of this court. Mr. Day has failed to provide any response whatsoever. The plaintiff therefore asks that Mr. Day be compelled to respond to the discovery forwarded to him on January 6, 2003.

Respectfully submitted,

Craig T. Trebilcock
Pa I.D. No. 48344
Associate Counsel for the Plaintiff
100 East Market
PO Box 15012
York, PA 17405-7012
717 846-8888


Richard B. Cook
Licensed in Maryland
Counsel for the Plaintiff
17 Jonathan's Court
PO Box 411
Hunt Valley, MD
410 683 9469

LR 7.1 CERTIFICATE OF NONCONCURRENCE

Undersigned counsel for the plaintiff certifies that the preceding motion has been served upon Charles Day but that no concurrence prior to its filing has been obtained. On January 30, 2003, the undersigned wrote to Mr. Day requesting responses be made and indicating that judicial supervision would be sought absent timely responses. This letter has not received a response.

Respectfully submitted,



Craig T. Trebilcock
Pa I.D. No. 48344
Associate Counsel for the Plaintiff
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THE UNITED STATES DISTRICT COURT
Middle District of Pennsylvania
Harrisburg, PA

Yan SHAO)	No. 1:00 CV 1901
)	(JUDGE Rambo)
Plaintiff,)	
)	
v.)	
Edward Cuccia)	
Charles Day)	
John / Jane Doe)	CIVIL ACTION - LAW
Law Offices of Ferro & Cuccia)	
)	
<u>Defendants.</u>)	

PLAINTIFF'S SECOND REQUEST FOR DOCUMENTS FROM
THE DEFENDANT AND JUDGEMENT DEBTOR CHARLES DAY

To:

CHARLES DAY
80-100 Tryon Place
Jamaica, NY 11432
212 274 8408

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, the plaintiff requests that the defendant and judgement debtor produce the following documents within 30 days of service of this pleading, by mailing a copy of the same to the undersigned at the address indicated below.

Respectfully Submitted,



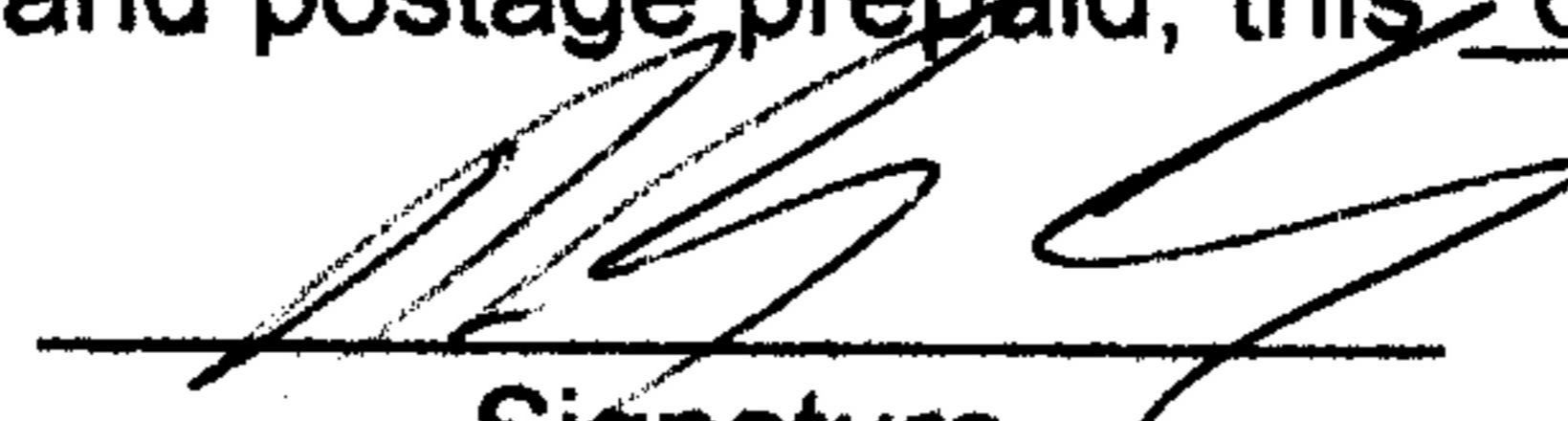
Richard B. Cook, LA #21248
PO Box 411
Hunt Valley, MD 21030-0411
410 683 9469

RE: LOANS SOUGHT AND OBTAINED BY MR. DAY

1. Please provide a copy of any loan application signed by you and submitted to any commercial lender in 2000, 2001, 2002, or 2003.
2. Please provide a copy of any paperwork whatsoever related to the obtaining of any loan extended to you in 2000, 2001, 2002, or 2003.
3. Please provide a copy of any paperwork whatsoever related to the obtaining of any loan extended to you in 2000, 2001, 2002, or 2003.
4. Please provide a copy of any mortgage loan application signed by you and submitted to the Bank of America in 2002.
5. Please provide a copy of any paperwork whatsoever related to the obtaining of any mortgage extended to you in 2000, 2001, 2002, or 2003.
6. Please provide a copy of any paperwork whatsoever related to the obtaining of any mortgage extended jointly to you and to any other party in 2000, 2001, 2002, or 2003.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing document request have been served upon counsel for the above referenced defendant and upon all other counsel of record by first class mail, properly addressed and postage prepaid, this 6th of January, 2003.



Signature

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THE UNITED STATES DISTRICT COURT
Middle District of Pennsylvania
Harrisburg, PA

Yan SHAO

) No. 1:00 CV 1901
) (JUDGE Rambo)

Plaintiff,

v.

Edward Cuccia

Charles Day

John / Jane Doe

Law Offices of Ferro & Cuccia

) CIVIL ACTION - LAW

Defendants.

**PLAINTIFF'S SECOND SET OF REQUESTS FOR ADMISSIONS
BY THE DEFENDANT CHARLES DAY**

To:

CHARLES DAY
80-100 Tryon Place
Jamaica, NY 11432
212 274 8408

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, the plaintiff herewith requests the above referenced defendant and judgement debtor respond to the appended requests for admission within the time specified in the appropriate Rule.

Respectfully Submitted,



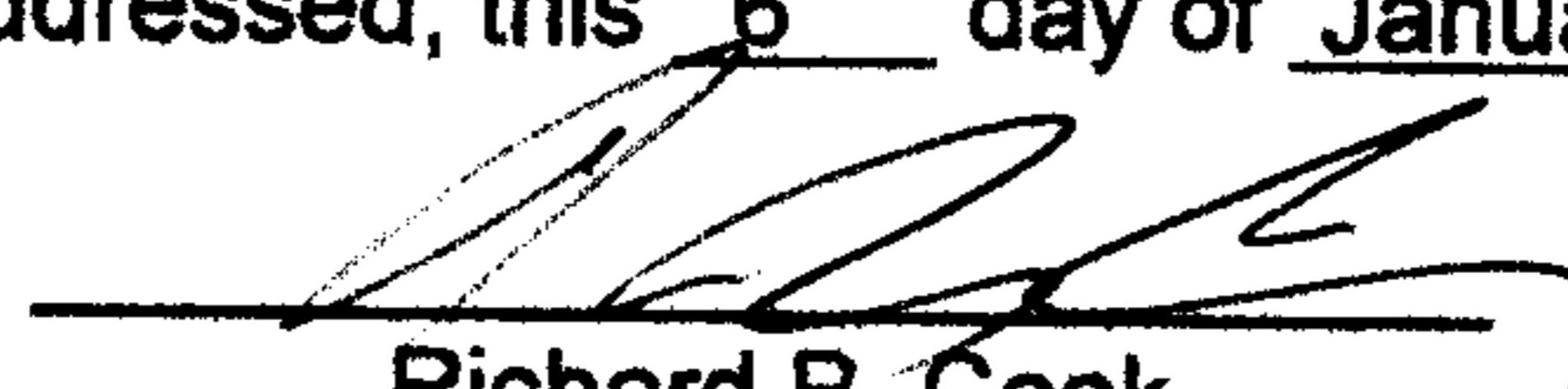
Richard B. Cook, LA #21248
PO Box 411
Hunt Valley, MD 21030
410/683-9469

**RE: MR. DAY'S PREVIOUS RESPONSES TO ASSET DISCOVERY
INTERROGATORIES**

1. In May 2002, the defendant and judgement debtor Charles C, Day, obtained a mortgage from the Bank of America.
2. The above referenced mortgage was on property in the State of Florida.
3. In obtaining the above referenced mortgage, the defendant and judgement debtor Charles C, Day, provided information to the Bank of America concerning his income for 2001.
4. Pamela Day, the wife of the defendant and judgement debtor Charles C, Day, participated in seeking and obtaining the above referenced mortgage.
5. In the course of seeking and obtaining the above referenced mortgage, information concerning the income of Pamela Day, the wife of the defendant and judgement debtor Charles C, Day, was provided to the Bank of America.
6. During all or a portion of 2002, the personal property of the defendant and judgement debtor Charles C, Day included an automobile registered in the name of the defendant and judgement debtor Charles C, Day.
7. The automobile referenced in Admission #6 was obtained on or after July 2000.
8. The automobile referenced in Admission #6 was obtained via a loan from a commercial lender.
9. In 2002, the value of the personal property of the defendant and judgement debtor Charles C, Day exceeded \$1,000.
10. The present value of the personal property of the defendant and judgement debtor Charles C, Day exceeds \$1,000.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing request for admissions has been served upon Mr. Day, pro se counsel of record, by placing a copy of same in the U.S. Mail, postage prepaid and properly addressed, this 6th day of January, 2003.



Richard B. Cook

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Licensed in Maryland
And Louisiana

Licensed in Hawaii
(inactive)

Richard B. Cook
Attorney and Counselor at Law
PO Box 411
Hunt Valley, MD 21030
410 683 9469

Mr. Charles Day, Esq.
80-100 Tryon PL.
Jamaica, NY 11432
718 968 4858

January 31, 2003

Re: Yan Shao v. Cuccia, et al, 1:00 - CV - 1901, in the Third Circuit, 01-4327

Dear Mr. Day

On January 6 2003, I forwarded two discovery documents to you, (1) a request for admissions, (2) a request for documents. The thrust of these inquiries has to do with the Florida real estate transaction about which you testified on Jan 28 2003. Responses are due 30 days after the information requests were mailed (adding three mail days), that is, by February 10, 2003 - at the latest. Permit me to suggest that I do not wish to extend the deadline by which these responses are due. Instead, if responses are not received by February 10, 2003, I intend promptly to seek judicial supervision in the form of a motion to compel responses.

Very truly yours,

Richard B. Cook

Cc: Harold Herman, Esq.

DECLARATION

I submit this declaration pursuant to 28 U.S.C. 1746.

- 1) My name is Richard B. Cook. I am an attorney licensed to practice law in Louisiana, Maryland and Hawaii (inactive).
- 2) I certify that the appended letter was forwarded via first class mail on February 1, 2003 to M. Charles Day to the address specified in the letter.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 1, 2003.

ORIGINAL SIGNED

Signature

CERTIFICATE OF SERVICE

Undersigned counsel certifies that on March 28, 2003, a copy of the appended motion to compel responses has been served on the defendant by First Class Mail, postage pre-paid, to the following address:

Charles Day, Esq.
80-100 Tryon Place
Jamaica, NY 11432



Richard B. Cook